

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Mike Banicki,

Plaintiff,

Civ. No. 11-725 (RHK/SER)

**ORDER**

v.

RPS Companies, Inc., and Charles Merritt,

Defendants.

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This matter came before the Court on September 20, 2011, on Plaintiff's Motion for Default Judgment (Doc. No. 7) against Defendant RPS Companies, Inc. Defendant did not appear at the hearing.

The record indicates that RPS Companies, Inc. was served with the Summons and Complaint on March 31, 2011, and has failed to respond or otherwise appear in this action. (See Doc. No. 3.) The record further indicates that Defendant Charles Merritt has not been served with process.<sup>1</sup> At the hearing, Plaintiff requested that this action be dismissed without prejudice as against Merritt, and that Judgment be entered against RPS Companies, Inc. in the amount of \$10,118. The Court concludes that Plaintiff is entitled to the requested relief, which is unopposed in any event.

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS ORDERED:**

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<sup>1</sup> The Clerk of the Court erroneously entered Merritt's default on August 22, 2011. (See Doc. No. 6.)

1. Plaintiff's Motion for Default Judgment (Doc. No. 7) as to RPS Companies, Inc. is **GRANTED**. Plaintiff shall recover of RPS Companies, Inc. the sum of \$10,118, comprising actual damages of \$5,000, statutory damages of \$1,000, and costs and attorneys' fees totaling \$4,118;

2. The Clerk's Entry of Default (Doc. No. 6) is **VACATED** with respect to Defendant Charles Merritt only; and

3. This action is **DISMISSED WITHOUT PREJUDICE** insofar as it is brought against Merritt, pursuant to Federal Rule of Civil Procedure 4(m).

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated: September 20, 2011

s/Richard H. Kyle  
RICHARD H. KYLE  
United States District Judge